worthiness that may be used in regulations in place of credit ratings?

4. In evaluating potential standards of credit-worthiness, the following criteria appear to be most relevant; that is, any alternative to credit ratings should:

a. Provide for a reasonable and objective assessment of the likelihood of full repayment of principal and interest over the life of the security;

b. Foster prudent risk management;

c. Be transparent, replicable, and well defined;

d. Allow different banking organizations to assign the same assessment of credit quality to the same or similar credit exposures;

e. Allow for supervisory review;

f. Differentiate among investments in the same asset class with different credit risk; and

g. Provide for the timely and accurate measurement of negative and positive changes in investment quality, to the extent practicable.

Are these criteria appropriate? Are there other relevant criteria? Are there standards of credit-worthiness that can satisfy these criteria?

5. OTS recognizes that any measure of credit-worthiness likely will involve tradeoffs between more refined differentiation of credit-worthiness and greater implementation burden. What factors are most important in determining the appropriate balance between precise measurement of credit risk and implementation burden in considering alternative measures of credit-worthiness?

6. Would the development of alternatives to the use of credit ratings, in most circumstances, involve cost considerations greater than those under the current regulations? Are there specific cost considerations that OTS should take into account? What additional burden, especially at community and regional savings associations, might arise from the implementation of alternative methods of measuring credit-worthiness?

7. The credit rating alternatives discussed in this ANPR differ, in certain respects, to those being proposed by OTS and other federal banking agencies for regulatory capital purposes.[8] OTS believes such distinctions are consistent with current differences in the application and evaluation of credit quality for evaluating loans and investment securities and those used for risk-based capital standards. Are such distinctions warranted? What are the benefits and costs of using different standards for different regulations?

Alternatives for Replacing References to Credit Ratings in Part 560

8. What are the advantages and disadvantages of the alternative standards described in the **SUPPLEMENTARY INFORMATION**?

9. Should the credit-worthiness standard include only high quality and highly liquid securities? Should the standard include specific standards on probability of default? Should the standard vary by asset class? Are there other alternative credit-worthiness standards that should be considered? Should a combination of credit-worthiness standards be used, and if so, in what instances would this be preferred? Would different credit-worthiness standards be appropriate for different asset classes, probabilities of default, varying levels of liquidity, different types securities or money market instruments, etc?

10. If OTS relied upon internal rating systems, should the credit-worthiness standard include any pass grade or should it only be mapped to higher grades of pass?

11. Alternatively, should the banking regulators revise the current regulatory risk rating system to include more granularity in the pass grade and develop a credit-worthiness standard based upon the regulatory risk rating system?

12. Should OTS adopt standards for marketability and liquidity separate from the credit-worthiness standard? If so, how should this differ from the credit-worthiness standard?

13. Should an alternative approach take into account the ability of a security issuer to repay under stressed economic or market environments? If so, how should stress scenarios be applied?

14. Should an assessment of credit-worthiness link directly to a savings association's loan rating system (for example, consistent with the higher quality credit ratings)?

15. Should a savings association be permitted to consider credit assessments and other analytical data gathered from third parties that are independent of the seller or counterparty? What, if any, criteria or standards should the OTS impose on the use of such assessments and data?

16. Should a savings association be permitted to rely on an investment quality or credit quality determination made by another financial institution or another third party that is independent of the seller or counterparty? What, if any, criteria or standards should OTS impose on the use of such opinions?

17. Which alternative(s) would be most appropriate for smaller, community-oriented savings associations and why?

18. Are there other alternatives that ought to be considered?

19. What level of due diligence of a savings association should be required when considering the purchase of an investment security? How should OTS set minimum standards for monitoring the performance of an investment security over time so that savings associations effectively ensure that their investment securities remain "investment quality" as long as they are held?

Dated: October 6, 2010.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010–25845 Filed 10–13–10; 8:45 am]

BILLING CODE P

[8] 75 FR 52283, August 25, 2010.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AF56

Small Business Investment Companies—Conflicts of Interest and Investment of Idle Funds

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration proposes to revise a rule which prohibits a small business investment company (SBIC) from providing financing to an Associate, as defined in the rules, unless it first obtains a conflict of interest exemption from SBA. The revision would eliminate the requirement for an exemption in the case of a follow-on investment in a small business concern by an SBIC and an Associate investment fund, where both parties invested previously on the same terms and conditions and where the follow-on investment would also be on the same terms and conditions as well as in the same proportions. In addition, this rule would implement two provisions of the Small Business Investment Act. First, it would bring the public notice requirement for conflict of interest transactions into conformity with statutory requirements. Second, it would expand the types of investments an SBIC is permitted to make with its "idle funds" (cash that is not immediately needed for fund operations or investments in small business concerns). Finally, the rule would remove an outdated cross-reference and eliminate a section that exactly

duplicates a provision found elsewhere in part 107.

DATES: Comments on the proposed rule must be received on or before November 15, 2010.

ADDRESSES: You may submit comments, identified by RIN 3245–AF56, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* Harry E. Haskins, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Carol Fendler, Investment Division, 409 Third Street, SW., Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Investment Division, Office of Capital Access, (202) 205–7559 or *sbic@sba.gov.*

SUPPLEMENTARY INFORMATION:

Section 107.730—Financings which constitute conflicts of interest. The Small Business Investment Act of 1958, as amended (SBI Act), authorizes SBA to adopt regulations to govern transactions that may constitute a conflict of interest and which may be detrimental to small business concerns, small business investment companies, their investors, or SBA. Accordingly, SBA promulgated 13 CFR 107.730, which generally prohibits financing transactions that involve a conflict of interest, unless the SBIC obtains a prior written exemption from SBA. The most common type of transaction requiring an exemption is "financing an Associate." Associates of an SBIC, as defined in § 107.50, encompass a broad range of related parties based on business, economic and family ties, both direct and indirect.

In addition to identifying transactions requiring a conflict of interest exemption, § 107.730 sets forth the circumstances under which an SBIC is permitted to co-invest with its Associates. The primary purpose of these provisions is to ensure that the terms of such co-investments are "fair and equitable" to the SBIC, *i.e.* that the SBIC is not being disadvantaged relative to an Associate. The co-investment rules include a number of "safe harbor" provisions under which the transaction is presumed to be fair and equitable to the SBIC; one of these safe harbors covers financings where the SBIC and its Associate invest at the same time and on the same terms and conditions. SBIC managers frequently seek to rely on this provision because they are involved in the management of more than one fund and would like to have the funds co-invest in a small business. SBA generally considers such co-investments to be beneficial because risk is spread across more than one entity. The small business may also benefit from having access to multiple investors.

It became apparent after adoption of the current § 107.730 that certain types of transactions could be characterized as both "co-investment with an Associate" and "financing an Associate." As with all other transactions that involve the financing of an Associate, SBA has required the SBIC to obtain a prior written exemption even if the financing would fall under the safe harbor for co-investments with Associates.

However, SBA believes the exemption requirement is unnecessarily burdensome for one particular type of transaction: The SBIC and an Associate investment fund (most typically a fund under common management) make an initial investment in a small business under the same terms and conditions, which include the acquisition by each fund of at least a 10% equity interest in the small business. This initial round of financing is a "co-investment with an Associate" and does not require a conflict of interest exemption. However, when the same two parties want to make a follow-on investment in the same small business, again under the same terms and conditions, the second and subsequent round(s) of financing are considered to be "financing an Associate" and do require a prior written exemption. This is because the Associate fund's 10% or greater equity interest causes the small business itself to be defined as an Associate of the SBIC under paragraph (8)(ii) of the definition in § 107.50. While SBA would approve a conflict of interest exemption for a follow-on financing transaction on the same terms and conditions by an SBIC and its Associate fund, the Agency is concerned that the exemption requirement may cause unnecessary delays in making financing available to the small business, and imposes a significant administrative burden on both the SBIC and SBA.

To address this concern, this proposed rule adds an exception to 13 CFR 107.730(a)(1). Currently, this paragraph prohibits the financing of an Associate without a prior written conflict of interest exemption. Under the new exception, a prior written exemption would not be required for an Associate financing that satisfies all of the following conditions:

1. The small business that will receive the financing is an Associate of the SBIC, pursuant to paragraph (8)(ii) of the Associate definition, only because an Associate investment fund already holds a 10% or greater equity interest in the small business.

2. The SBIC and the Associate fund previously invested in the small business at the same time and on the same terms and conditions.

3. The SBIC and the Associate fund will provide follow-on financing to the small business at the same time and on the same terms and conditions.

4. The SBIC and the Associate fund will provide follow-on financing to the small business in the same proportionate dollar amounts as their respective investments in the previous round of financing (*e.g.,* if the SBIC invested $2 million and the Associate invested $1 million in the previous round, their follow-on investments would be in the same 2:1 ratio).

The revision will allow transactions meeting these specific conditions to be governed only by the co-investment provisions of § 107.730(d) rather than by the "Associate financing" provisions of the current § 107.730(a), thereby returning to SBA's original intent when it promulgated the co-investment rules. SBA expects that this change will help to eliminate delays in making follow-on financing available to small businesses while providing appropriate protection for small business concerns, investors in SBICs and the Federal government.

SBA is also proposing a change to § 107.730(g), which requires public notice of all requests by SBICs for conflict of interest exemptions. The current language requires public notice by both SBA (via publication in the **Federal Register**) and the requesting SBIC (via publication in a newspaper in the locality most directly affected by the transaction). These disclosure requirements are more extensive than those required by section 312 of the SBI Act, from which the local publication requirement was removed by section 3 of Public Law 107–100 (December 21, 2001). This rule would bring the regulation into conformity with the statute by eliminating the requirement for public notice in the affected locality; the requirement for public notice in the **Federal Register** would not be affected.

Section 107.530—Restrictions on investments of idle funds by leveraged Licensees. An SBIC holding idle funds may invest those funds only as permitted by § 107.530(b). The permitted investments are all relatively short term and bear minimal or no risk of loss, such as direct obligations of the United States that mature within 15 months of the date of investment. The current regulation largely follows section 308(b) of the SBI Act (15 U.S.C. 687(b)), but does not reflect an amendment made by Public Law 108–447, Division K, section 202 (December 8, 2004) that allows an SBIC to invest "in mutual funds, securities, or other instruments that consist of, or represent pooled assets of" the various direct investment vehicles permitted by section 308(b). 15 U.S.C. 687(b)(3). For example, this provision allows an SBIC to invest idle funds in a money market account, as long as the money market fund invests exclusively in permitted instruments. This proposed rule would bring the regulation into conformity with the statute.

Section 107.855—Interest rate ceiling and limitations on fees charged to Small Businesses ("Cost of Money"). The proposed rule would correct an error by removing § 107.855(g)(10). This paragraph provides an exclusion from the Cost of Money calculation in the form of a cross-reference to the non-existent § 107.855(i).

Section 107.505—Facsimile requirement. The proposed rule would eliminate duplication by removing § 107.505, which requires an SBIC to have the capability to receive fax messages. This section repeats language already found in § 107.504(b).

Compliance with Executive Orders 12866, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a "significant" regulatory action under Executive Order 12866.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or presumptive effect.

Executive Order 13132

The proposed rule would not have substantial direct effects on the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this proposed rule has no federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Paperwork Reduction Act, (PRA) 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose any new reporting or recordkeeping requirements. The requirement for SBICs to submit requests for conflict of interest exemptions is not an information collection as that term is defined by the PRA because the requests do not involve any standardized or identical reporting, recordkeeping or disclosure requirements. Rather, each request for exemption is unique to the circumstances of the particular SBIC. In any event, to the extent that SBICs are currently required to submit conflict of interest exemptions under the circumstances described in this proposed rule, that requirement would no longer exist.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an Initial Regulatory Flexibility Act (IRFA) analysis which describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, § 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This proposed rule would affect all SBICs, of which there are currently 309. SBA estimates that approximately 75% of these SBICs are small entities. Therefore, SBA has determined that this proposed rule would have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule would not be significant. The conflict of interest provision would eliminate the current requirement for SBICs to obtain a conflict of interest exemption for a particular type of transaction. This change is expected to reduce the regulatory burden on SBICs and allow them to close such financing transactions with less delay.

SBA asserts that the economic impact of the rule, if any, would be minimal and entirely beneficial to small SBICs. Accordingly, the Administrator of the SBA hereby certifies that this rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration proposes to amend part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.,* 683, 687(c), 687b, 687d, 687g, 687m, Pub. L. 106–554, 114 Stat. 2763; and Pub. L. 111–5, 123 Stat. 115.

§ 107.505 [Removed]

2. Remove § 107.505.

3. Amend § 107.530 by redesignating paragraphs (b)(3) through (b)(6) as (b)(4) through (b)(7) and adding a new paragraph (b)(3) to read as follows:

§ 107.530 Restrictions on investments of idle funds by leveraged Licensees.

* * * * *

(b) *Permitted investments of idle funds.* * * *

(3) Mutual funds, securities, or other instruments that exclusively consist of, or represent pooled assets of, investments described in paragraphs (b)(1) or (b)(2) of this section; or

* * * * *

4. Amend § 107.730 by revising paragraphs (a)(1) and (g) to read as follows:

§ 107.730 Financings which constitute conflicts of interest.

(a) * * *

(1) Provide Financing to any of your Associates, except for a Financing to an Associate that meets all of the following conditions:

(i) The Small Business that receives the Financing is your Associate, pursuant to paragraph (8)(ii) of the Associate definition in § 107.50, only because an investment fund that is your Associate holds a 10% or greater equity interest in the Small Business.

(ii) You and the Associate investment fund previously invested in the Small

Business at the same time and on the same terms and conditions.

(iii) You and the Associate investment fund are providing follow-on financing to the Small Business at the same time, on the same terms and conditions, and in the same proportionate dollar amounts as your respective investments in the previous round(s) of financing (for example, if you invested $2 million and your Associate invested $1 million in the previous round, your respective follow-on investments would be in the same 2:1 ratio).

* * * * *

(g) *Public notice.* Before granting an exemption under this § 107.730, SBA will publish notice of the transaction in the **Federal Register**.

§ 107.855 [Amended]

5. Amend § 107.855 by removing paragraph (g)(10) and redesignating current paragraphs (g)(11) through (g)(13) as (g)(10) through (g)(12).

Dated: October 6, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–25729 Filed 10–13–10; 8:45 am]

BILLING CODE 8025–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 140

RIN 3038–AC98, 3038–AD02

Financial Resources Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII and Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed regulations establish financial resources requirements for derivatives clearing organizations (DCOs) for the purpose of ensuring that they maintain sufficient financial resources to enable them to perform their functions in compliance with the Commodity Exchange Act and the Dodd-Frank Act.

DATES: Submit comments on or before December 13, 2010.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.cftc.gov.* Follow the instructions for submitting comments on the Web site.
- *E-mail: DCOSIDCOfinres@cftc.gov.* Include the RIN number in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director and Chief Counsel, 202–418–5480, *jlawton@cftc.gov,* Phyllis P. Dietz, Associate Director, 202–418–5449, *pdietz@cftc.gov,* or Eileen A. Donovan, Special Counsel, 202–418–5096, *edonovan@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21 Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Title VII

On July 21, 2010, President Obama signed the Dodd-Frank Act.[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act (CEA)[4] to establish a comprehensive regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

Section 725(c) of the Dodd-Frank Act amends Section 5b(c)(2) of the CEA, which sets forth core principles with which a DCO must comply to be registered and to maintain registration as a DCO.

The core principles were added to the CEA by the Commodity Futures Modernization Act of 2000 (CFMA).[5] Consistent with the CFMA's principles-based approach to regulation, the Commission did not adopt implementing rules and regulations, but instead promulgated guidance for DCOs on compliance with the core principles.[6] However under Section 5b(c)(2), as amended by the Dodd-Frank Act, Congress expressly confirmed that the Commission may adopt implementing rules and regulations pursuant to its rulemaking authority under Section 8a(5) of the CEA.[7]

The Commission continues to believe that, where possible, each DCO should be afforded an appropriate level of discretion in determining how to operate its business within the statutory framework. At the same time, the Commission recognizes that specific bright-line regulations may be necessary in order to facilitate DCO compliance with a given core principle, and ultimately, to protect the integrity of the U.S. clearing system. Accordingly, in developing the proposed regulation, the Commission has endeavored to strike an appropriate balance between establishing general prudential standards and prescriptive requirements.

Core Principle B, as amended by the Dodd-Frank Act, requires a DCO to possess financial resources that, at a minimum, exceed the total amount that would enable the DCO to meet its financial obligations to its clearing members[8] notwithstanding a default by

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] *See* Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (2000).

[6] *See* Appendix A to Part 39, 17 CFR Part 39. The Commission notes that it intends to propose removal of Appendix A, in its entirety, as part of a future proposed rulemaking.

[7] Section 8a(5) of the CEA authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

[8] The term "clearing members" refers to entities that have a direct financial relationship to a DCO, regardless of the DCO's organizational structure,

Continued